(14,806.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 268.

WILLIAM W. ARMSTRONG, APPELLANT.

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition, filed October 31, 1890	1	1
Traverse, filed November 13, 1890	6	4
Submission of case, May 28, 1891	7	4
Findings of fact and conclusion of law, filed June 8, 1891	8	5
Opinion of the court	10	7
Judgment dismissing the petition, June 8, 1891	11	8
Application of claimant for and allowance of appeal, July 14, 1891	12	8
Certificate	13	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 2, 1895.

1 In the Court of Claims.

WILLIAM W. ARMSTRONG
vs.
THE UNITED STATES. } No. 16839.

I.—*Petition. Filed October* 31, 1890.

To the honorable chief justice and judges of the Court of Claims:

The petition of William W. Armstrong respectfully represents:

I.

That he is a citizen of the United States and a resident of the District of Columbia.

II.

That on the 22d day of February, 1864, he was appointed and commissioned as a captain in the Sixty-fifth regiment of United States colored troops, and served as such officer until the 12th day of July, 1865, when he was transferred to the Ninety-second regiment of United States colored troops, and served with said last-named regiment until honorably mustered out of the service the 31st day of December, 1865.

2 III.

That on the 23d day of February, 1866, he was duly appointed and commissioned a second lieutenant in the Seventh regiment of United States infantry, and that he served as such officer until the 3d day of April, 1866.

IV.

That on the 3d day of April, 1866, he was appointed a first lieutenant in said Seventh regiment, and served as such officer until the 16th day of April, 1870; was unassigned from the 16th day of April, 1870, until the 4th day of May, 1970.

V.

That on the 4th day of May, 1870, he was assigned to the Sixteenth regiment United States infantry, and joined said regiment on the 24th day of May, 1870, and served as such officer until the 5th day of August, 1870, when he was placed under arrest, and on the 18th day of November, 1870, his name was stricken from the Army Register, in pursuance of what purports to be general court-martial order No. 53.

VI.

That said alleged general court-martial order No. 53 was and is null and void, for reason that the same was issued in pursuance of the findings and sentence of a general court-martial convened at Nashville, Tennessee, October 4, 1870, pursuant to special order No. 205, headquarters department of the South, Atlanta, Georgia, September 19, 1870, which said findings and sentence were never submitted to or approved by the President of the United States, as required by law; which order and sentence are as follows:

3 "*General Court-martial Order No.* 53.

"WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
"WASHINGTON, *November* 18, 1870.

(Extract.)

"1. Before a general court-martial which convened at Nashville, Tennessee, October 4, 1870, pursuant to special order No. 205, headquarters department of the South, Atlanta, Georgia, September 19, 1870, and of which Surgeon James F. Weed, U. S. Army, is president, was arraigned and tried 1st Lieutenant William W. Armstrong, 16th United States infantry."

(Then follows the findings on the charges and specifications.)

"And the court does therefore sentence him, 1st Lieutenant William W. Armstrong, 16th United States infantry, to be dismissed the service of the United States.

"JAMES F. WEED,
"*Surgeon U. S. Army, President.*

"MERRITT BARBER,
"1*st Lt.* 16*th Infantry, Judge Advocate.*"

"HEADQUARTERS DEPARTMENT OF THE SOUTH,
"ATLANTA, GEORGIA, *October* 21, 1870.

"The proceedings and findings in the foregoing case of 1st Lieutenant William W. Armstrong, 16th United States infantry, are approved, and the record is respectfully forwarded to the honorable Secretary of War, for the action of the President of the United States.

"ALFRED H. TERRY,
"*Brigadier General, Commanding.*"

"WAR DEPARTMENT,
"WASHINGTON, *November* 18, 1870.

"2. In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case of 1st Lieutenant William W. Armstrong have been forwarded to

the Secretary of War, for the action of the President of the United States, and the proceedings, findings, and sentence are approved.

"WM. W. BELKNAP,
"*Secretary of War.*

"The sentence will be duly executed."

4 "3. 1st Lieutenant William W. Armstrong, 16th United States infantry, accordingly ceases to be an officer of the army from the date of this order.

"By order of the Secretary of War:

"E. D. TOWNSEND,
"*Adjutant General.*"

VII.

That he is still lawfully a first lieutenant in the United States Army, never having been lawfully deprived of his commission as such officer; that since the 18th day of November, 1870, he has been ready and willing to perform his duties as such officer, but has not been assigned to duty, and has been refused all pay and allowances as such officer since the 30th day of November, 1870.

VIII.

That on the 22d day of March, 1882, he made application to the President of the United States to be restored to duty in the army and to have his name restored to the Army Register, and no final action thereon has been taken by the President of the United States, as will appear by the following letter from the Secretary of War:

"WAR DEPARTMENT,
"WASHINGTON CITY, *July* 6, 1882.

"SIR: I have received from the President your letter to him of the 22d day of March last, in which you claim that you were illegally dismissed from the army as first lieutenant 16th U.S. infantry, and request reinstatement. I beg to inform you in reply that the same was duly referred to the honorable Attorney General, who expressed the opinion that the action in your case was in accordance with law.

"Very respectfully, ROBERT T. LINCOLN,
"*Secretary of War.*

"W. W. Armstrong, Esq., Washington, D. C."

5 IX.

Your petitioner avers that said order No. 53, so far as the same purports to dismiss him from the Army of the United States, or to deprive him of his said office, is null and void, and that he is entitled to retain his said office and to receive his lawful pay, notwithstanding said order; and your petitioner claims the sum of thirty-

eight thousand nine hundred and eighty-eight dollars and eighty-seven cents ($38,988.87) as and for his pay as such first lieutenant for the period from the 1st day of December, 1870, to the 28th day of October, 1890, inclusive.

WILLIAM W. ARMSTRONG,
First Lieutenant U. S. A.

J. DANIELS AND
J. V. OFFENBACHER,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *City of Washington,* } ss:

William W. Armstrong, the above-named claimant, being duly sworn, says that he has read the foregoing petition by him subscribed and knows the contents thereof; that matters therein set forth of his own knowledge are true, and those stated on information and belief he believes to be true; that the sum therein claimed is justly due him, after allowing all just credits and offsets; and that no assignment or transfer of the claim or any interest therein has been made.

WILLIAM W. ARMSTRONG.

Subscribed and sworn to before me this 28th day of October, 1890.

[L. S.]

W. T. JOHNSON,
Notary Public

6 II.—*Traverse. Filed November* 13, 1880.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney General.

7 III.—*Argument and Submission of Case. May* 28, 1891.

At a Court of Claims held in the city of Washington on the 28th day of May, A. D. 1891—

The case of William W. Armstrong *vs.* The United States, No. 16839, was argued by Mr. Daniels, for the claimant, and by Mr. Chaney, for the defendants, and submitted.

8 IV.—*Findings of Fact and Conclusion of Law. Filed June* 8, 1891.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

On April 3, 1866, the claimant was appointed a first lieutenant in the Seventh regiment United States infantry, and served as such until April 16, 1870; was unassigned from that date until May 4, 1870, when he was assigned to Sixteenth regiment of infantry, joined his regiment, May 24, 1870, and served as such officer until August 5, 1870, when he was put under arrest.

II.

Thereafter he was tried by a general court-martial, upon the following charges:

1st. Neglect of duty to the prejudice of good order and military discipline. 2d. Disobedience of orders. 3d. Absence without leave. 4th. Conduct unbecoming an officer and a gentleman.

Additional charges.—1st. Violation of an act of Congress, approved March 2, 1863. 2d. Violation of the 83d article of war. 3d. Conduct prejudicial to good order and military discipline; with numerous specifications under the charges.

The court-martial found him guilty of each of the charges and sentenced him to be dismissed the service of the United States.

III.

The proceedings and findings were approved by Brigadier General Terry, commanding, and by him the record was forwarded to the Secretary of War for the action of the President thereon.

The proceedings were thereafter thus endorsed by the Secretary of War:

WAR DEPARTMENT, WASHINGTON, *November* 18, 1870.

2. In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case of 1st Lieutenant William W. Armstrong have been forwarded to the Secretary of War, for the action of the President of the United States, and the proceedings, findings, and sentence are approved.

WM. W. BELKNAP,
Secretary of War.

The sentence will be duly executed.

9 Thereupon an order was issued as follows, and the claimant left service in the army:

First Lieutenant William W. Armstrong, 16th U. S. infantry, ac-

cordingly ceases to be an officer of the army from the date of this order.

By order of the Secretary of War.

E. D. TOWNSEND,
Adjutant General.

On December 15, 1870, the following order was issued and carried into execution:

ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Dec.* 15, 1870.

General orders No. 126.

By direction of the President the following transfers and assignments of commissioned officers are made to fill vacancies, to the present date, * * * 1st Lieut. George H. Palmer, unassigned, to the 16th infantry, vice Armstrong, dismissed, * * *

By the order of the Secretary of War.

E. D. TOWNSEND,
Adjutant General.

It does not appear that the President ever confirmed or disapproved the proceedings or sentence of said court-martial, or took any action thereon, or made any orders in the case unless he did so by some of the facts herein stated.

IV.

It does not appear that the claimant made any objection to the execution of any of said orders until he addressed the following letter to the President:

WASHINGTON, D. C., *March* 22, 1882.

SIR: I have the honor to request, most respectfully, that you may be pleased to give consideration to my case, a brief of which will be set before you by my counsel, Edward R. D. Mayne, Esq., of Washington, D. C.

I have unjustly been deprived of my rank and pay as a first lieutenant in the United States Army by a so-called court-martial sentence, which has done me a grievous injury. Not only did this court act in contrariety of law by finding a sentence at variance with the evidence, but two of the members were ineligible to sit in judgment upon me for reasons fully set forth in the brief. Furthermore, the findings have never been approved by the President of the United States, without which the proceedings are void.

It is not without having first pondered deeply on the magnitude of the request that I make of the Executive of a great nation that I come before you with my case; but believing in the eternal justness of all things pertaining to this Government, I approach you in order that you may give me that aid that my case merits.

I have the honor to be, your obedient servant,

W. W. ARMSTRONG.

To his Excellency the President of the United States.

V.

The claimant was paid his salary until the time he left the service as aforesaid, and has been paid nothing since.

Conclusion of Law.

Upon the foregoing findings of fact the court decide as a conclusion of law that the claimant has no cause of action and that his petition must be dismissed.

10 V.—*Opinion of the Court.*

RICHARDSON, Ch. J., delivered the opinion of the court:

This case, upon the facts cannot be distinguished in any principle of law from Ide's case reported in the 25th Court of Claims Report, 401, except in one particular.

Here we have an order issued by the adjutant general in the name of the Secretary of War which purports to be "by direction of the President" assigning an officer by name to the claimant's regiment, "vice Armstrong, dismissed."

It is contended on the part of the defendants that this order was a recognition by the President of the dismissal of the claimant and therefore an approval of the proceedings and sentence of the court-martial. In that the facts are stronger against the claimant than were those in Ide's case.

We said in Ide's case:

In time of peace, at least, an officer is not obliged to obey an illegal order. If such an order dismissing a subordinate from office be issued by a superior, but not by the highest officer in authority, the subordinate is not left without some obligations resting upon him. It becomes his duty, at once or within a reasonable time, to appeal to the highest authority for revocation, modification, or correction of the illegal order. If he obeys and submits to the order without appeal and without objection for an unreasonable length of time he must be held to have abandoned all title and claim to the office and to its emoluments, and to have waived his right to both.

The claimant took no exceptions to the order for his dismissal, performed no further service, and offered to perform none, presented no petition to President Grant, during the then remaining 7 years of his official terms, and did not complain until nearly twelve years after he had left the service, when he addressed a letter to President Arthur set out in finding IV.

During all these years like Ide, by his own actions, he led the War Department to assume and to act upon the assumption that he voluntarily submitted to the order of dismissal and acquiesced therein, and thus subjected the defendants to the expense of providing other officers to perform the service for which he now seeks compensation to the extent of $38,988.87.

Upon the authority of and for the reason stated in the opinion in Ide's case we hold that the claimant has no cause of action and that his petition must be dismissed.

11 VI.—*Judgment of the Court.*

WILLIAM W. ARMSTRONG
vs.
THE UNITED STATES. } No. 16839.

At a Court of Claims held in the city of Washington on the 8th day of June, 1891, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, William W. Armstrong, be dismissed.

BY THE COURT.

12 VII.—*Appeal.*

WILLIAM W. ARMSTRONG
vs.
THE UNITED STATES. } No. 16839.

And now comes the above-named claimant, by his attorneys, and prays an appeal from the judgment of the court rendered in this case on the 8th day of June, 1891, to the Supreme Court of the United States.

J. DANIELS AND
J. V. OFFENBACKER,
Plaintiff's Attorneys.

Filed and allowed in vacation July 14, 1891.

WILLIAM A. RICHARDSON,
Chief Justice.

13 In the Court of Claims.

WILLIAM W. ARMSTRONG
vs.
THE UNITED STATES } No. 16839.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law thereon filed by the court, of the opinion of the court, of the judgment of the court, of the application of the claimant for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington city, this 3d day of August, A. D. 1891.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: 14,806. Court of Claims. No. 268. William W. Armstrong, appellant, *vs.* The United States. Filed August 14, 1891.

Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM W. ARMSTRONG,
APPELLANT,

v.

THE UNITED STATES.

No. 268.

Appeal from the Court of Claims.

STATEMENT OF THE CASE.

1st. Appellant was not a West Point graduate, but was a soldier who had served with distinction in the volunteer army, and was appointed as captain in the 65th regiment of U. S. Colored Infantry, on 22d February, 1864, and served in that regiment as captain up to July 12, 1865, when he was transferred to the 92d U. S. Colored Troops, and served in that regiment as captain up to December 31, 1865, when he was honorably mustered out.

2d. Thereafter, to wit, 23d February, 1866, he was appointed, confirmed, and commissioned a second lieutenant in the regular army and assigned to duty in the 7th regiment U. S. Infantry, and subsequently, to wit, 3d April, 1866, was promoted to be first lieutenant in said regiment,

and served as such first lieutenant to 16th April, 1870, when he was unassigned until 4th May, 1870, at which date he was assigned to the 16th regiment U. S. Infantry, and joined said regiment 24th May, 1870, and served as such officer up to 5th August, 1870, when he was placed under arrest, tried by general court-martial, and sentenced to be dismissed the service; the proceedings and finding was approved by the department commander, and the record "forwarded to the honorable Secretary of War for the action of the President."

The Secretary of War made an endorsement as follows:

"WAR DEPARTMENT, *November* 18, 1870.

"In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court in the foregoing case of 1st Lieutenant William W. Armstrong have been forwarded to the Secretary of War for the action of the President of the United States, and the proceedings, findings, and sentence are approved.

"WM. W. BELKNAP,
"*Secretary of War.*

"The sentence will be duly executed.

"1st Lieutenant William W. Armstrong, 16th U. S. Infantry, accordingly ceases to be an officer of the Army from the date of this order.

"By order of the Secretary of War.

"E. D. TOWNSEND,
"*Adjutant General.*"

In March, 1882, appellant applied to the President to be restored to duty, claiming that he had not been legally dismissed. His application being denied, he brought this suit.

There was no one appointed and confirmed to fill the vacancy caused by his supposed dismissal, but an unassigned officer was assigned to duty in his place.

The court of claims, on authority of the case of Ide, reported in 25th Court of Claims Report, 401, and 150 U. S. 517, dismissed the petition, and appellant made his appeal to this court.

Appellant's Points and Authorities.

I.

That to give effect to the finding and sentence of the court-martial required the act of the President in the exercise of a judicial capacity, the court-martial in this case being held in a time of peace.

Art. 106, *Rules and Articles of War.*

Runkle's case, 122 *U. S. Rep.* 543.

U. S. v. *Page*, 137 *U. S.* 673.

II.

The case of Ide, on authority of which the court of claims dismissed this case, was afterwards affirmed by this court (150 *U. S.* 517), on authority of the case of Bird Fletcher, 148 U. S. Rep. 84. This case differs materially from either of said cases, in this:

The certificate of the Secretary of War in this case merely states that the proceedings of the court-martial "have been forwarded to the Secretary of War for the action of the President."

In U. S. v. *Page*, 137 *U. S.*, the certificate of the Secretary of War was that the proceedings had been "*submitted to the President.*"

The certificate in the case of Fletcher is identical in words with the certificate in this case, but the order (Record, pp. 5 and 6) that appellant ceased to be an officer

was by the Adjutant General "by order of the Secretary of War." The general order 126 (Record, p. 6), issued by the Adjutant General "by order of the Secretary of War," although it recites that, by direction of the President, Palmer was assigned to the 16th Infantry, vice Armstrong, dismissed, cannot be held to be an approval of the proceedings and findings of the court-martial.

III.

Under the provisions of the statute (Rev. Stat. U. S. § 1229), appellant could only be dismissed in pursuance of the sentence of a court-martial. If the President had appointed a successor to Armstrong, and such successor had been confirmed by the Senate, then Armstrong would have ceased to be an officer of the Army, and then the action of the President would have been clearly a matter of record. But this was not done; another officer, unassigned, was merely assigned to Armstrong's place by order of the Secretary of War.

Blake v. *U. S.*, 103 *U. S. Rep.* 227.

Appellant submits that the finding of the court of claims is not supported by the facts as they appear in the record.

THÓ C. FLETCHER,
Att'y for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

WILLIAM W. ARMSTRONG, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 268.

BRIEF FOR APPELLEE.

STATEMENT.

Prior to August, 1870, the appellant was first lieutenant in the Sixteenth Regiment of Infantry. Thereafter he was tried by a general court-martial on sundry charges, and was found guilty and sentenced to be dismissed the service of the United States. The proceedings and findings were approved by Brigadier-General Terry, commanding, and by him the record was forwarded to the Secretary of War for the action of the President thereon. The proceedings were thereafter indorsed by the Secretary of War as follows:

> WAR DEPT., *Washington, Nov.* 18, 1870.
> In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case of 1st Lieutenant